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A

LETTER

TO A

Person of Quality,

^{Concerning the}
^{T. Tenison}

Archbishop of CANTERBURY'S

SENTENCE

OF

DEPRIVATION

Against the
^{T. Walton}

Bishop of St. DAVIDS.



L O N D O N,

Printed in the Year, 1699.

LETTER
TO
THE
FACULTY OF QUALITY

OF THE

UNIVERSITY OF



OF THE

OF THE

OF THE

Printed in the Year 1833

A

L E T T E R

T O A

Person of Quality.

S I R,

I AM the less backward in obeying your Commands, to write my Thoughts of the Bishop of *St. David's* Case; out of a persuasion that the best of men are not to be trusted with any greater Power, Civil or Ecclesiastical, than our Constitution warrants.

The chief imputation within Ecclesiastical Cognizance which he labors under, is said to be *Symony*: for this, if clearly proved, without presumptions and strain'd Inferences, that a Bishop is deprivable, I shall not deny; but the Question is,

Whether a Bishop of this Kingdom is, by the sole Authority of his Metropolitan, deprivable for *Symony*?

Till better inform'd, I cannot but hold the Negative, with all imaginable deference to the proper Judges; and yet shall shew that our Law is not defective herein, but has appointed a proper Court for enquiring into, and punishing all such Enormities: nor is there any necessity of recourse to the Legislature.

It cannot be denied, that before the coming of the Normans, the Bishops sat in the same Court with the Civil Judges; but then if they had any judicial Power, (a) 'twas only in matters concerning the *Divine Law*: and it seems that they were to inform the People, who determined thereupon as they thought fit. Thus it continued till the year 1085.

(a) *Vid. Leges*
Edgari c. 5.
de Comitibus.
Cui quidem
illius diæcesis
Episcopus &
Senator in-
terfunt, quorum
alter jura divina
alter humana
populum
edocet.

(b) *Spelm.*
Concil. 2 Vol.
f. 14. ib. Nec
causam
quæ ad regi-
men anima-
rum perti-
net, ad judi-
cium seculari-
um hominum
adducant.

(c) *Chron.*
Gerv. Dorob.
Col. 1386.
Mat. Paris.
Const. Cap. 7.
Nullus qui de
Rege teneat
in Capite,
&c.

(d) *Spelm. Re-
liq. Icenia,*
f. 1604 Anno
23. H. 8.

But by a Law then made, Ecclesiastical Courts were set up separate from the Civil; and matters which concern'd (b) the *regiment of Souls*, were appropriated to the Ecclesiastical: by this means, by degrees some Causes which affected Civil Rights, were *in ordine ad spiritualia*, left to their Jurisdiction. But as they often encroach'd upon the King's Courts of Law, they with great struggle kept the Power of restraining them, especially where the matter concern'd the King or any of his Peers: and therefore tho' Excommunication was accounted purely Spiritual, by the Constitution (c) of *Clarendon*, 10 H. 2. in affirmance of the antient Law of the Kingdom, no Tenant in *Capite* is to be *excommunicated*, unless the King, if within the Kingdom, if not his Chief Justice, were first made acquainted with the Cause; nor were their Lands to be *interdicted*. Tho' the Chief Justice in those times had greater Authority, than the Chief Justice of the *King's Bench* at this day; yet a Power has resided in that Court, to restrain and punish the encroachments of Persons exercising Ecclesiastical Jurisdiction; a remarkable instance of which is given in (d) *Sir H. Spelman's Remains*.

In relation to the present Question, I think these particulars may appear with great clearness.

1. That

1. That all Deprivations of Bishops or other Prelates, us'd, by the course of the Common Law, to be in *Councils*.

2. Tho the *Councils* were call'd Ecclesiastical, when the Summons was only or chiefly for Spiritual matters, or regarding the Canon Law; the Layty were by the Constitution of the Kingdom to be parties and privies to all the Canons which pass'd, and Judgments in pursuance of those or other Canons; and thus the practice continued till the time of Archbishop *Becket*.

3. Whatever judicial Power was exercis'd in Ecclesiastical or Civil *Councils* of the Nation, devolv'd upon the House of Lords.

4. No Statute has taken away the Jurisdiction in these matters, which has been vested in the House of Lords.

5. Whatever the ordinary Jurisdiction of an Archbishop may be, and how much soever preserv'd, it cannot extend to the depriving of a Bishop.

1st. By what has been observ'd of the first Institution of Ecclesiastical Courts here in *England* it appears, that we have no occasion of enquiring into proceedings in such Causes before the time of *W. I.* after whose Accession to the Throne, till the 4th of his reign, no Prelate had been depriv'd: and then Archbishop *Stigand* led the way.

* *Malmsbury*, tho a Bigot for the Court of *Rome*, owns that he was *Deposed* or *Deprived*, *coacto concilio*, "A Council being assembled."

Hoveden † calls this a *Great Council* celebrated at the command, and in the presence of *King William*,

and

* *Malmsb. De Gestis Pontif. f. 116.*
† *Hoveden f. 259. Eodem Anno concilium magnum in octabis Pasche Wintonie celebratum est, jubente & presente Rege. W. dom. Alex. Papa consensiente.*

(a) Hoveden and with the consent of the Pope, in which Council he says *Stigand is degraded*. Hoveden speaks of the Deprivations in that Council, of *Stigand's Brother Agelmare* Bishop of the *East-Angles*, and of some Abbots: which however he supposes to have been by an (a) abuse or straining, both of the Canons and the Law of the Land.

(b) Ib. f. 269. At the Council at *Westminster*, 2 H. 1. where as Hoveden expresses (b) it, all the Princes or Great men of the Kingdom, both Ecclesiastical and Secular, were present; several Abbots of Foreign and English Birth (c) were depos'd, and depriv'd of the Honours which they had acquired unjustly, or lived in dishonestly.

(c) Plures Francigenæ Abbates & Angli sunt depositi, & honoribus privati, quos injuste adquisierunt aut in eis inhoneste vixerunt. Eadmerus says (d) "From the Authority of the Holy Fathers, the surreption of the Symoniacal Heresy was condemn'd in that Council; and names several Abbots who were then depos'd (e) for Symony, in which he is follow'd by (f) *Malmsbury*.

(d) Eadm. 2dly. That the Laity were of right Members of those Ecclesiastical Councils, and so admitted to be till within the time of H. 2. is very evident.

(e) Eadm. sup. In qua culpa inventi depositi sunt Guido Abbas de Perfcore, &c. Lanfranc Archbishop of *Canterbury* in the time of W. I. having enquired what was the ancient (g) manner of holding Synods among the English; after mention of the order in which the Prelates are to sit, 'tis told him; "Then (b) let the Laity of good

(f) Malmsb. de Gestis Pontif. f. 129. b. "Conversation be introduced, or they who should deserve or obtain to be there by a joint Election.

(g) Modus tenendi Synodos apud Anglos. That the Laity were at the Council of *Winchester* above mention'd is pass'd Dispute; and so they were at the Council at *Westminster*, 2 H. 1.

(h) Exinde introducuntur Laici bonæ conversationis, vel qui Electione conjugali interesse meruerint, effigie Cleopatraz, C. 8. f. 35. & Spelm. Concil. 2 vol. f. 1.

Maud, H. 1st's intended Queen, having been enter'd into a Nunnery, *Malmsbury* says the matter came to a *Disceputation*, and informs us, that Archbishop *Anselm* could not be induc'd to consent to the Marriage till (a) 'twas sworn by lawful witnesses, that (b) she wore a Veil only to avoid the importunity of Suitors, but was never profess'd.

This *Disceputation* and Consent of the Archbishop, was in a Council; where, as *Eadmerus* who was present informs us, she offer'd her self to be rried by the (c) judgment of the whole Church of *England*.

That this was an Ecclesiastical Cause is pass'd Dispute; yet for the Decision of it there convened the Bishops, Abbots, all the Nobles and Clergy (d). *Anselm* stated her case before all the Nobility (e) and Commons of the Realm; upon this judgment was given, that they might marry according to the (f) Christian Law; and then all crying together that the matter was justly Decreed, they were lawfully join'd together.

In the 8th of H. 1. an Ecclesiastical Council was held, wherein the Clergy were restrain'd from marrying; the very Act or Canons of which Council (g) *Hoveden* gives us at large: They are there said to be statuted or enacted, by the Archbishops and Bishops, in the presence of the King, with the Assent of his Early and Barons.

This being for Ecclesiastical matters, the Bishops are mention'd as having the chief Authority; yet the Act or Canons pass'd with the Assent of the Laity.

Thus in (h) the 27th of that King, *William* Archbishop of *Canterbury* is said to have assembled a General Council of all the Bishops, Abbots, and religious

(a) *Malmsb.*
f. 93. Res in
disceptationem venit.

(b) Sine professione causa
procurum velum geffisse.

(c) Offere se
judicio totius eccles. Anglorum, &c.

(d) Nobiles
quique; ac religionis ordinis viri.

(e) Tota regni
nobilitas populusque; minor.

(f) Secundum legem
Christianam.

(g) *Hoveden*
f. 270.

(h) *Contingit*
ad Flor. Wigorn. f. 1127.

(a) Conflux-
erant quoq;
illuc magnæ
multitudines
Clericor. Lai-
cor. tam divi-
tum quam
mediocrium.

(b) Quædam
propter nimi-
um æstuantis
turbæ tumult-
um ab au-
dientia judi-
cantium pro-
fligata.

(c) Hunting-
f. 223, 224.
& Malmf. f.
106.
* Chron. Gerv.
Dorob. f.
1429. Assensu
Regis & pri-
morum omni-
um regni hæc
subscripta
promulgata
sunt capitula,
etc.

Quadril. lib. 5.
in Princip.
Gerv. Dorob.
Col. 1586.
Seldeni Ja-
nus Anglor.
p. 108.
Hæbent pos-
sua de Rege
sicut Baroni-
am.

gious Persons; but then there resorted thither (a) *great multitudes of Clergy and Laity*, both rich and mean: where the croud (b) and noise was so great, that 'twas difficult to judg which way the Majority determin'd.

King *Stephen* being taken Prisoner in the 6th of his Reign (c), his Brother the Pope's Legat, Bishop of *Winchester*, held an Ecclesiastical Council: that the Laity both Lords and Commons were there is pass'd Dispute, the Council having been adjourn'd in expectation of the *Representatives* of the City of *London*, who soon after came, and declar'd themselves sent a *Communione Londoniarum*, "from the Com-
munity of *London*."

And as late as 11 H. 2. a *Council* being held by *Richard* Archbishop of *Canterbury*, then the Pope's Legate, the Canons were promulged with the Assent of the King, and all the *Nobility of the Kingdom* *.

3d. That whatever judicial Power was exercis'd in any of these Councils belongs now to the Lords in Parliament, cannot be denied, without question-
ing their Jurisdiction in general.

'Tis observable that in the Council, 27 H. 1, there were particular Persons *Judicantes*, judging, tho there was the Consent of more: who the Persons that judg'd were, appears by the Constitution of *Clarendon*, 10 H. 2. in affirmance of the Common Law, which says, "The Archbishops, Bishops, and
"all Persons of the Kingdom, who hold of the King
"in chief, have their Possessions of the King as a
"Barony, and from thence answer to the Justices,
"and the King's Officers, perform all Rights and
"regal Customs, and as the other Barons ought
"to

" to be at the Judgments of the King's Court, &c.

In the Case of *Roger Mortimer*, impeach'd by the Commons in Parliament of High-Treason, *Les dits* Rot. Parl. 4. E. 3. n. 1.
Counts, Barons, & Piers, come Juges au Parliament, per assent du Roy en la Parl. agarderent & ajugerent, &c.

And in the case of the Earl of *Middlesex* Impeach'd by the Commons, the Lord-Keeper delivering the Judgment of the Lords, says, Journal Dom. Proc. Ann. 21. & 22. J. 1.

The High-Court of Parliament doth adjudge, &c.

4th. It appearing that Deprivations were judicial Acts of Councils, and the Judgments there were the judgments of the Lords; at least that Authority has been since vested in them; Let's see whether this was ever taken away.

The Statute 24 H. 8. for the restraint of Appeals 24 H. 8. c. 12. provides, that some particular Spiritual Causes there mention'd, shall be finally adjudged and determin'd within the King's Jurisdiction and Authority, in such Courts Spiritual and Temporal, as the nature of the matter shall require, without Appeal to any foreign Power. Then it provides, that Appeals shall be made in *Manner* and *Form* as there follows, and *not otherwise*: from the Bishop to the Archbishop, to be definitively decreed without Appeal to any other Person or Court; if before the Archdeacon of any Archbishop, or his Commissary, to the *Archbishop*; from thence to the Archbishop, without further Appeal: if begun with the Archbishop, to be finally determin'd as that Act has appointed; which seems to be by the Archbishop alone, no Appeal being provided for from him, except where the matter concerns the

This Statute relates not to the Case where a Jurisdiction is exercis'd contrary to Law.

B

King,

King, and then the Appeal is to be to the Convocation.

25 H. 8. c. 19.

The Statute 25 H. 8. is more general, taking in all Spiritual Causes, and provides, that Appeals shall be prosecuted as was appointed by the former Statute in the Cases there express'd; then it adds an Appeal from the Archbishop to the Delegates, and provides that no further Appeal be had or made from the said Commissioners.

Notwithstanding this it has been resolv'd that there may be a Commission of Review to other Commissioners, and so the Law is taken at this day: and the reason for it is, that the Prerogative lodged in the Crown shall not be taken away by general words: but the Prerogative of the Crown is to judg in the proper Courts; which as to the Deprivation of Bishops, as I have shewn, is the House of Lords in Parliament.

Besides, the Statute 25 H. 8. provides, that the Causes not named in the 24th shall be tried, as others are appointed by the 24th; and by that an Appeal in a Spiritual Cause concerning the King, as the Deprivation of a Bishop is, was to be determined in Convocation.

'Tis further observable, that neither of those Statutes gave a Jurisdiction to the Spiritual Courts of Archbishops or others, where they had none before, only provides for Appeals in Causes within their Jurisdiction: therefore matter of Deprivation, which was never within their Jurisdiction, is *casus omissus* out of those Statutes; and by consequence 'tis proper to petition the Lords upon their assuming such a Jurisdiction.

Tho

Tho the Statute 24 H. 8. gives no Authority to the Convocation to judg originally in Causes concerning the King; yet in times of Popery they supposing that the supream Authority in such Causes was in the Clergy, both Lords and Commons petitioned the King to grant a Commission to his Clergy in Convocation to judg of the validity of his Marriage with *Ann of Cleve*: yet this was not thought sufficient without the Assent of the King, Lords and Commons in Parliament, by which that Marriage was declared void. The legality of the Commission 35 H. 8. they might suppose founded upon the Statute which takes from the Pope that Headship he had assumed, and by consequence the necessity of his Consent by his *Legate* or otherwise to the Acts of Ecclesiastical Councils; and further annexes and unites this Authority to the Crown, and provides that the King, his Heirs and Successors, shall have full Power and Authority to visit, repress, redress, reform, and order all Errors, &c. which might be by any manner of *Spiritual Authority* or Jurisdiction. 35 H. 8. N. 25. 26 H. 8. c. 1.

This seeming only to leave the Causes to the proper Courts; the Statute 1 Eliz. not only annexes all Spiritual Jurisdiction to the *Imperial Crown of this Realm*, but particularly impowers the Queen, her Heirs and Successors, to grant Ecclesiastical Commissions. 1 Eliz. c. 1.

Afterwards the Act 16 Car. 1. repeals that Clause in the Statute 1 Eliz. and enacts that no new Court shall be erected with like Power. Still those parts of the Statutes 26 H. 8. and 1 Eliz. which unite Spiritual Jurisdiction to the Crown, remain untouch'd; 'tis agreed that these are but declaratory of the Common Law, upon which the Jurisdiction exercis'd by Popes, was an Usurpation. Nothing therefore is more plain, than that as antiently, while the Nation was under this Usurpation, matters of Deprivation were judg'd of in the Great Council of the Nation, with the Assent of the Pope; now they are to be judg'd and determined by the Lords Spiritual and Temporal in Parliament, without any interposition of the Pope: and all Judgments elsewhere are violations of the right of the Lords, who have this Jurisdiction properly, and originally. 16 C. 1. c. 11. 5th.

5thly Since this Power never belong'd to Archbishops, but with others, as Members of the Great Council; there's no colour to imagine that 'tis saved by the Clause in the 13 Car. 2. c. 12. Act 13 Car. 2. which provides, that the Statute 16 Car. 1. shall not take away any ordinary Power or Authority from the Archbishops, or Bishops.

Besides the Evidence above, that matter of Deprivation is not within their ordinary Power; we have the Authority of very learned Judges, Justice Brown and Justice Weston, who in the 3d and 4th of Eliz. refused to act as Delegates upon an Appeal from a Sentence of Deprivation by the Bishop of Winchester, as Visitor of a College; because the Deprivation was merely Temporal, and by a Lay Patron: where the only reason was not that the Bishop acted as a Lay Patron, but as well that the Deprivation was of a Temporal Interest: and therefore the Judges held the Party might have his Remedy by Action at Common Law.

And fully to come up to this Case, the Barony annexed to the Bishoprick, is to many purposes a Lay-Fee: according to the Constitution of Clarendon, ties the Bishops to Lay Services; and upon Contempts or the like, *Rex capit se ad Baroniam*: but this Sentence would deprive the King of that Remedy.

Whether it naturally follows from the Premises, that the Lords in Parliament are the proper and only Judges in the Case in Question; is submitted to your Consideration by

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S I R,

Your very humble

Servant.

